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Federal Communications Commission

DA 98-1942

DISPATCHED Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	MM Docket No. 98-18
Table of Allotments,	)	RM-9204
FM Broadcast Stations.	)	RM-9326
(Macon, Hampton and Roswell, Georgia) <sup>1</sup>	)	

**REPORT AND ORDER**  
(Proceeding Terminated)

Adopted: September 16, 1998

Released: September 25, 1998

By the Chief, Allocations Branch:

1. At the request of U.S. Broadcasting Limited Partnership ("petitioner"), the Commission has before it the Notice of Proposed Rule Making, 13 FCC Rcd 2994 (1998), proposing the reallocation of Channel 300C1 from Macon to Hampton, Georgia, as the community's first local aural service, and the modification of petitioner's license for Station WPEZ to specify Hampton as its community of license. Comments were filed by the petitioner, reiterating its intention to apply for Channel 300C1, if reallocated to Hampton, and by Cox Radio, Inc. ("Cox") and Dogwood Communications, Inc. ("Dogwood"), which included a counterproposal.<sup>2</sup> Reply comments were filed by the petitioner, Cox and Dogwood.<sup>3</sup> Reply comments addressed to Dogwood's counterproposal were filed by the petitioner and Dogwood.

2. The proposed reallocation of Channel 300C1 from Macon to Hampton was filed pursuant to the provisions of Section 1.420(i) of the Commission's Rules, which permits the modification of a station's license to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community R&O"), 4 FCC Rcd 4870 (1989), recon. granted in part ("Change of Community MO&O"), 5 FCC Rcd 7094 (1990). Hampton, with a 1990 U.S. Census population of 2,694 persons, is located in Henry County, with a population

<sup>1</sup> The community of Roswell has been added to the caption.

<sup>2</sup> Public Notice of the counterproposal was given on July 23, 1998, Report No. 2285.

<sup>3</sup> All of these reply comments were filed one day after the reply comment date set forth in the Notice of Proposed Rule Making pursuant to a one-day extension of time requested by petitioner's counsel and unanimously agreed to by all of the parties. Although the extension request does not comply with that portion of Section 1.46 which stipulates that extension requests shall be filed seven days prior to the filing date, we will accept these pleadings since it provides the Commission with a complete record in this proceeding and all parties agreed to the one-day extension.

of 58,741 persons. In the Notice, we recognized that Hampton, although not located within any Urbanized Area, is located approximately 8 kilometers south of the southernmost edge of the Atlanta, Georgia, Urbanized Area. However, a staff engineering study confirmed that Station WPEZ's 70 dBu signal would not place a city grade (70 dBu) signal over 50% or more of the Urbanized Area. Therefore, a Tuck showing was not required pursuant to Headland, Alabama, and Chattahoochee, Florida, 10 FCC Rcd 10352 (1995). Nevertheless, based on the showing made by petitioner, the Notice stated our belief that Hampton would be found independent of Atlanta.

3. Cox, the licensee of Stations WSB(AM) and WSB-FM, Atlanta, and WJZF(FM), La Grange, Georgia, opposes the reallocation of Station WPEZ to Hampton. It argues that Hampton should not be given a first local service preference as promoted by the petitioner. Rather, it contends that Hampton should be considered as part of the Atlanta Urbanized Area. Cox recognizes that the Census Bureau did not include Hampton as part of the Atlanta Urbanized Area in the 1990 Census. However, according to Cox, the tremendous growth of the Atlanta Region suggests that Hampton would be included in the Urbanized Area if current data are used. It states that the Atlanta region has experienced a 19% increase in population between 1990 and 1997, and that Henry County is the fastest growing county in the Atlanta region, at a rate of 8.6% between 1996 and 1997 alone.<sup>4</sup> Thus, given this growth since the 1990 Census, and the fact that Hampton is located only 5 miles from the 1990 Urbanized Area boundaries, Cox argues that the petitioner is obligated to demonstrate that Hampton is distinct and independent from Atlanta using the criteria set forth in RKO General, Inc. ("KFRC"), 5 FCC Rcd 3222 (1990) and Richard Tuck ("Tuck"), 3 FCC Rcd 5374 (1988), to justify a first local service preference. Cox agrees that petitioner's proposal, as set forth in the Notice, will not cover 50% or more of the Atlanta Urbanized Area with a 70 dBu, city-grade, signal. However, it states that, under certain circumstances, the petitioner could seek to relocate its transmitter further north than proposed herein and, if granted, Station WPEZ would likely be able to cover more than 50% of Atlanta. While Macon, with its 1990 U.S. Census population of 107,365 people, receives 1 mV/m service from at least 17 commercial radio stations, excluding petitioner's, Cox submits that Hampton is "abundantly" served by a "significant" number of radio stations from the Atlanta market.<sup>5</sup> Further, while petitioner states that the reallocation would result in a gain in service to nearly two million people, this will also produce a loss of service to 403,028 people. Cox argues that the gain is unpersuasive since this is a natural occurrence when a station moves closer to an urbanized area and should be discounted where the loss occurs to a less well served population and the loss is of an existing service, not a potential service, citing Eatonton and Sandy Springs, Georgia, and Anniston and Lineville, Alabama ("Eatonton"), 6 FCC Rcd 6580 (1991) (reallocation denied in part due to the loss of service to approximately 400,000 people). It submits that this is just the situation the Commission envisioned when it expressed in Change

<sup>4</sup> The population data comes from the Atlanta Regional Commission, 1997 Population and Housing 2 (Nov. 1997). See Cox Comments, page 2, fn. 3.

<sup>5</sup> According to Investing in Radio, 1988, the Atlanta market has 17 FM and 26 AM stations. See Cox Comments, Exhibit C.

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of Community MO&O, supra, the concern that listeners, with a legitimate expectation of continued service, would find they no longer have access to a service they have come to rely on.

4. Using 1990 Census figures, Cox states that Hampton is only 1/150th the size of Atlanta (2,694 vs 415,200 people) and the communities are only 25 miles apart. Further, it contends that Hampton is "significantly" dependent upon Atlanta. Using petitioner's own estimates, 70% of Hampton's workforce is employed outside the community, which is a higher figure than the Commission previously has found to demonstrate a community's lack of independence, citing Elizabeth City, North Carolina, and Chesapeake, Virginia, 9 FCC Rcd 3586, 3589 (1994) (40% of Chesapeake residents working in Chesapeake indicates that it is not independent of Norfolk); and KFRC, supra, at 3224 (35.1% of Richmond residents work in Richmond suggests that it is not independent of San Francisco). Further, while petitioner stated that the largest employer within Hampton is the Federal Aviation Administration Center ("FAA"), Cox states that the FAA is not located in Hampton. Cox submits that Hampton is linked economically with Atlanta through a shared advertising market. It states that the Atlanta metro radio market encompasses Hampton and that Arbitron's ratings include Henry County as part of the Atlanta metro radio market. Cox notes that Hampton is also included in the Atlanta Designated Market Area and Metropolitan Statistical Area. Hampton does not have its own local newspaper, being served instead by four Henry County newspapers. In addition, The Atlanta Journal and Constitution has wide distribution through Hampton and Henry County.<sup>6</sup> Cox also points out that Hampton does not have its own cable system, a fact which also weighs against independence according to the Commission's decision in Elizabeth City, North Carolina, and Chesapeake, Virginia, supra.

5. While Cox acknowledges that Hampton has its own local government which provides some municipal services, it argues that the Mayor and City Council members are part-time positions, being paid \$4,800 and \$1,800 per year, respectively. Its local school only accommodates grades kindergarten through fifth grade, with the middle and high school age children sent to schools in other communities. Cox also states that the Parks and Recreation Department is administered by the county and Hampton does not have any public transportation or local telephone directory. Further, Hampton's health care facility is only a two-doctor clinic which is only open from 8 a.m. to 6 p.m. weekdays and, when closed, refers emergencies to a hospital in Riverdale, which is within the urbanized area. In addition, no nationally recognized civic organizations have a Hampton charter. Finally, Cox claims that Hampton's shopping is limited to a few independent retail stores and, according to the Hampton City Clerk, the majority of residents commute to Atlanta or surrounding communities for shopping and entertainment.

6. Dogwood, permittee of Station WAMJ, Channel 298A, Roswell, Georgia, also opposes the reallocation of Channel 300C1 to Hampton. It states that it filed a one-step

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<sup>6</sup> Cox states that the Commission in KFRC found that the lack of a community newspaper and the wide distribution of the urban city's newspaper to be significant in finding a community interdependent. KFRC, supra at 3224.

application to upgrade its facility to a Class C3 (BMPH-980309IE) and that the applied-for site is short-spaced by approximately 10.4 kilometers to the Hampton reference coordinates. Dogwood states that Roswell, with a population of 47,923 people, is located within the Atlanta Urbanized Area and Station WAMJ, being wholly-owned and controlled by African Americans, has sought to serve the greater Atlanta African American community since going on the air in December 1997. If Station WAMJ is upgraded to a Class C3, Dogwood states that the station will service an additional 517,324 persons. Like Cox, Dogwood argues that the petitioner seeks to serve the Atlanta Urbanized Area rather than Hampton, pointing to the disparity in the relative size of Hampton and Atlanta and the fact that a Hampton Station WPEZ would cover better than 50% of Atlanta with its 60 dBu signal. Dogwood also states that if the channel is reallocated as proposed, Macon, with a population 46 times greater than Hampton would have one aural service for every 11,845 persons while Hampton would have one high-powered aural service for 2,294 persons, or 80% fewer people. See Jefferson City, Cumberland Gap, Elizabethton, Tennessee, and Jonesville, Virginia, 13 FCC Rcd 2303 (1998). Dogwood also points out that the Commission has previously refused to reallocate a channel from a smaller urbanized area to a larger one, citing Eatonton, *supra*.

7. However, should the Commission decide that the public interest would be served by reallocating Station WPEZ from Macon to Hampton, Dogwood states that both proposals can be accommodated if the Hampton allotment is changed to a site 26.5 kilometers (16.5 miles) south-southeast of Hampton. From this site, Dogwood states that operating from such a site, Station WPEZ would provide service to 1,623,509 persons within its 60 dBu contour, or 81% of that theoretically provided if the site proposed in the Notice herein is used.

8. In reply comments, Cox continues to oppose the reallocation of Channel 300C1 from Macon to Hampton and also opposes Dogwood's counterproposal to the extent that it includes the Hampton allotment. Again, it argues that based on the totality of its showing, Hampton should be treated as part of the Atlanta Urbanized Area and denied a first local service preference.

9. In reply comments, petitioner contends that Dogwood's counterproposal should be denied and Cox's opposition comments dismissed. Petitioner states that, based on the Commission's allotment priorities, the allotment of Channel 300C1 at Hampton should be preferred over the grant of Dogwood's conflicting application.<sup>7</sup> According to the petitioner, as a first local aural service at Hampton, the proposal clearly satisfies priority (3). Further, it submits that since the proposed reallocation would result in the provision of an additional service to 1,959,550 persons within an area of 15,464 square kilometers, with a net loss of service to "only" 403,028 persons in an area of 12,307 square kilometers, the proposal also constitutes one "other public interest factor," thus satisfying priority (4). While it acknowledges that the Commission has stated that we will not blindly apply the first local service preference, petitioner

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<sup>7</sup> The allotment priorities are: (1) first fulltime aural service; (2) second fulltime aural service; (3) first local aural service; and (4) other public interest matters. Co-equal weight is given to priorities (2) and (3). Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982).

points out that the Commission has refused to extend the specialized showings required of stations seeking to move to communities within an urbanized area to situations such as this one where less than 50% of the Urbanized Area would receive a 70 dBu signal from the move-in station. See Headland, Alabama and Chattahoochee, Florida, *supra* at 10354. Thus, contrary to the oppositions of both Dogwood and Cox, the petitioner argues that it is neither required to provide further demographic data concerning the independence of Hampton or an analysis of such data pursuant to Tuck, *supra*. Further, it argues that Dogwood's attempt to have the proposal judged on the basis of Station WPEZ's 60 dBu contour is contrary to established Commission policy and should also be rejected.

10. Petitioner states that the conflict between its proposal and the Dogwood application lie in the fact that Dogwood has specified a transmitter site which is short-spaced to the previously filed petition. While Dogwood has suggested that the conflict can be resolved by moving the reference coordinates for the Hampton allotment to a site 29.7 kilometers (18.5 miles) east-southeast of the reference coordinates set forth in the Notice, petitioner states that a change in the site restriction of only 0.5 kilometers is actually needed to resolve the conflict. However, should the Commission decide that the two proposals need to be comparatively considered, petitioner states that Commission precedent requires the grant of its petition since it would provide a new service whereas Dogwood's proposal would only upgrade an existing service.

11. Following the Public Notice announcing Dogwood's counterproposal, both the petitioner and Dogwood filed responsive comments stating that they have reached a settlement whereby both the allotment at Hampton and the upgrade at Roswell can be granted.<sup>8</sup> Under the terms of the agreement, the petitioner withdraws its request for the allotment at the coordinates set forth in its petition and substitutes new coordinates (33.1504 North Latitude; 84.2510 West Longitude) and Dogwood will amend its application to specify as its transmitter site the roof of the building at 1050 Crown Point Parkway in Atlanta.<sup>9</sup> Dogwood also withdraws with prejudice its comments and counterproposal and April 29, 1998, reply comments and supports the grant of petitioner's proposal.

12. We believe the public interest would be served by reallocating Channel 300C1 from Macon to Hampton, Georgia. The reallocation will provide Hampton with its first local aural service, thus fulfilling priority (3) of the Commission's allotment priorities, while also enabling

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<sup>8</sup> In accordance with Section 1.420(j), both the petitioner and Dogwood submitted Declarations stating that neither party nor their principals have received or will receive any money or other consideration in exchange for the execution of the agreement.

<sup>9</sup> Dogwood filed an amendment to its pending application specifying the agreed-upon coordinates for Channel 298C3 at Roswell on August 7, 1998.

Station WPEZ to provide service to an additional 1,959,950 persons.<sup>10</sup> The retention of Channel 300C1 at Macon would fall under priority (4), other public interest matters. We recognize that the reallocation of Channel 300C1 will result in a loss of service to 455,266 persons within an area of 12,307 square kilometers. However, while we are concerned with the loss of service, our engineering analysis shows that all but 34,360 people will retain service from at least five services, thus being considered to be well-served. The staff has also confirmed that with the change in coordinates proposed by the petitioner and Dogwood, both the allotment at Hampton and the upgrade of Station WAMJ to Channel 298C3 at Roswell can be granted.

13. Cox does not argue that Hampton is not a community for allotment purposes. Rather, it argues that the community should be considered as part of the Atlanta Urbanized Area and, as such, not entitled to a first local service preference based upon a finding that Hampton is not independent of the Urbanized Area. In determining whether a community is part of an urbanized area, we look to the latest Census. In this case, it is the 1990 Census and Hampton is not included as part of the Urbanized Area. Although Cox submits that if the Census were to redefine the Atlanta Urbanized Area today, Hampton would be included, this is speculation on its part since the Census Bureau will not redefine the Atlanta Urbanized Area until it conducts the new census in 2000. Cox further argues that under certain circumstances, the petitioner could apply for a transmitter site which would enable Station WPEZ to cover more than 50% of the Atlanta Urbanized Area with a 70 dBu signal. In Headland, Alabama, and Chattahoochee, Florida, supra, the Commission stated that a first local service preference could be questioned where a station would cover 50% or more of an Urbanized Area with a 70 dBu signal. Here, according to the staff engineering study, Station WPEZ, as a Hampton station, would cover less than 50% of the Urbanized Area.<sup>11</sup> As such, the policy set forth in Headland, Alabama, and Chattahoochee, Florida, supra, is not applicable in this situation.

#### Technical Summary

14. Channel 300C1 can be allotted to Hampton, Georgia, in compliance with the Commission's minimum distance separation requirements with a site restriction of 19.8 kilometers (12.3 miles) southwest to accommodate petitioner's desired transmitter site.<sup>12</sup> In

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<sup>10</sup> The FM allotment priorities are: (1) first fulltime aural service; (2) second fulltime aural service; (3) first local service; and (4) other public interest matters. Co-equal weight is given to priorities (2) and (3). See Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88, 92 (1982).

<sup>11</sup> Specifically, at the revised reference coordinates for Hampton (33-15-04 and 84-25-10), the station will provide city-grade coverage to 17% of the Atlanta Urbanized Area. By way of contrast, at the reference coordinates originally proposed for Hampton in the Notice of Proposed Rule Making, the station would provide city-grade coverage to 17.7% of the Atlanta Urbanized Area.

<sup>12</sup> The coordinates for Channel 300C1 at Hampton, Georgia, are 33-15-04 North Latitude and 84-25-10 West Longitude.

addition, the proposal must conform to the technical requirements of Section 73.1030(c)(1)-(5) of the Commission's Rules regarding protection to the Commission's monitoring station at Powder Springs, Georgia.

15. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective November 9, 1998, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>
Hampton, Georgia	300C1
Macon, Georgia	222A, 256C1, 287C1

16. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of U.S. Broadcasting Limited Partnership for Station WPEZ, Channel 300C1, Macon, Georgia, IS MODIFIED to specify Hampton, Georgia, as its community of license, subject to the following conditions:

(a) Within 90 days of the effective date of this Order, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301).

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

17. IT IS FURTHER ORDERED, That the counterproposal filed by Dogwood Communications, Inc. (RM-9326), IS DISMISSED.

18. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

19. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180.

**FEDERAL COMMUNICATIONS COMMISSION**

**John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau**